



SENT VIA E-MAIL/FIRST-CLASS MAIL

March 1, 2013

Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, California 95815

Re: Delta Stewardship Council Comments to the State Water Resources Control Board Concerning Its Substitute Environmental Document

Dear Councilmembers:

The San Joaquin Tributaries Authority ("SJTA") is concerned about the Delta Stewardship Council's ("DSC") staff's initial support for the State Water Resources Control Board's ("State Water Board") Substitute Environmental Document ("SED"), as presented to the DSC at the February 21, 2013 meeting. For the reasons explained below, the SED is not consistent with the Delta Plan's promotion of the co-equal goals; rather, it threatens to impede realization of ecosystem restoration and water supply reliability and is therefore inconsistent with the Delta Plan.

**a. The SED Does Not Analyze Functionality of Flow**

The SED proposes a preferred alternative of 35 percent unimpaired flow and states that this is "for the protection of fish and wildlife." (SED, at ES-1.) Yet, nowhere in the SED does the State Water Board explain how any function of flow will improve the protection of fish and wildlife, other than more flow is always better. Instead, the SED makes unsupported generalizations that more flow is beneficial to fish. The SED does not offer quantitative or qualitative predictions for floodplain habitat, dissolved oxygen, water temperature, food web, turbidity or velocity which unimpaired flow supposedly helps restore to a more favorable condition. The State Water Board must demonstrate the probable and quantitative benefit to the ecosystem from flows (i.e. functionality). The SED does not do this.

For instance, the SED relies on the Department of Fish and Wildlife's ("DFW") Salmon Population Model version 1.6 to support the concept that increased flows will benefit fish populations. However, it does not include actual runs of the model with expected returns. The SJTA ran the DFW 1.6 model using the past ten years of actual hydrology. During those years, the model predicts **less returning fish at 35 percent unimpaired flow** than it predicts for returning fish from actual flows. These results

demonstrate that the State Water Board is not applying “functional flow” when the function of the proposed measures actually *harm* native fish abundance.

**b. Impacts Are Based on an Average of an 82-Year Period, Ignoring Dry Years Impacts**

The SED averages impacts over an 82-year period without analyzing impacts from specific water year types such as dry and critical years. Dry years and droughts are a certainty in California. Reservoir levels drop, deliveries are cut, and fields are fallowed. The SED must account for and analyze these definite impacts. Instead, the SED averages these especially hard-hit years which results in a dilution of impacts. In other words, the impacts look far less significant than what would take place in dry and critical years.

Consequently, farm and agriculture impacts are also more significant than indicated. The SED based its agricultural impact analysis on an area much larger than the Plan Area (Figure 1-2), stretching as far south as Fresno, and reaching up into the foothills, yet it excludes the City and County of San Francisco. This mischaracterizes where the agricultural impacts will truly be felt—the Modesto, Turlock, and Merced Irrigation Districts—and demonstrates that the SED is avoiding the issue by portraying disingenuous impacts.

For instance, the SED notes the following average annual reduction in deliveries:<sup>1</sup>

- Stanislaus: -6,000 af (maximum reduction of -93,000 af)
- Tuolumne: -172,000 af (maximum reduction of -270,000 af)
- Merced: -87,000 af (maximum reduction of -141,000 af)

(SED, Appendix G, Table G-6.) This equates to an average annual reduction of **128,295 acres of farmland** out of a total of approximately 319,000 acres.<sup>2</sup> As depicted in Figure G-6, **over 210,000 acres of farmland would be lost during drought years**. This represents over 66% of the total amount of farmland in the region.

The economic impact resulting from these losses include:<sup>3</sup>

- Average Direct: \$40 million annually (\$110 million maximum)
- Average Direct and Indirect: \$69 million (\$187 million maximum)
- Average Job Loss: 465 (1,265 maximum)

These numbers are reflective of immediate impacts. The SED does not address foreseeable future impacts after fields have been fallowed. The agricultural industry is not so easily stopped and started according to the flow of water and year type. It can take years to return to production after a crop loss due to fallowing, owners may face bank foreclosure and workers remain without jobs until production has resumed. In other words, this industry does not operate like a light switch; it cannot simply be turned on and off with such narrow impacts.

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<sup>1</sup> Because the preferred alternative of 35% unimpaired flow is not analyzed, the following numbers are representative of the 40% unimpaired flow proposal. The resulting numbers would therefore be slightly less.

<sup>2</sup> 59,000 acres (Modesto Irrigation District) + 144,000 (Turlock Irrigation District) + 116,000 (Merced Irrigation District)

<sup>3</sup> The impacts to City and County of San Francisco are not analyzed despite the SJTA informing the State Water Board that the City and County of San Francisco will experience devastating impacts; the SED does not evaluate any of these impacts.

Fallowing thousands of acres, forcing hundreds of farms to shut down, and losing hundreds of jobs and millions of dollars is not what the legislature envisioned when it defined “a more reliable water supply” as a co-equal goal.

The SJTA supports the DSC’s commitment to the mission of promoting the co-equal goals. However, the SJTA will not support measures such as the State Water Board’s SED which do not support the co-equal goals and threaten the livelihoods of its members’ consumers. The SJTA therefore urges the DSC and its staff to read the SED closely and analyze the genuine impacts it threatens to impose on the San Joaquin River watershed. The SJTA further requests a short period of time during the March 28 and 29, 2013 DSC meeting to offer a more detailed presentation on how the SED impacts the co-equal goals.

Very truly yours,

**O’LAUGHLIN & PARIS LLP**



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AUDREY K. PATTERSON

AP/tb

cc: San Joaquin Tributaries Authority  
Dan Ray, Chief Deputy Executive Officer